
(2014) 11 OHC CK 0077
In the Orissa High Court
Case No : RVWPET No. 49 of 2007

Laxmidhar Das

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2015) 120 CLT 351 : (2015) 1 ILR 60

Hon'ble Judges : P. Mohanty, J; Biswajit Mohanty, J

Bench : Division Bench

Judgement

Biswajit Mohanty, J.—This Review Petition has been filed by one Laxmidhar Das, who was opposite party No. 5 in OJC No. 13273 of 2001, with a prayer to review the order dated 5.5.2005 passed by this Court in the said writ application.

2. Heard Mr. S.S. Das, learned counsel for the petitioner, Mr. B.P. Pradhan, learned Additional Government Advocate for opposite party Nos. 1 to 3 and Mr. A.P. Bose, learned counsel for opposite party Nos. 6 to 12. None appeared on behalf of opposite party Nos. 4 and 5.

3. Mr. Das, learned counsel for the petitioner submitted that on 8.7.2000, Pandua Grama Panchayat vide Annexure-1 resolved to appoint a permanent Secretary in the said Grama Panchayat after withdrawal of ban order by the Government. Vide Annexure-2, an advertisement was made on 9.7.2000 fixing various eligibility criteria for the purpose of recruitment of a whole time Secretary. The said advertisement was sent to the offices of the District Panchayat Officer, Jagatsinghpur, Sub-Divisional Panchayat Officer, Block Development Officer, Kujanga and to all the Sarpanchs of different Grama Panchayats falling under Kujanga Panchayat Samiti. A copy of the said advertisement was also sent to the Employment Exchange Officer, Paradeep. As per the advertisement under Annexure-2, it was made clear that the candidates should have passed matriculate Examination and in case, the candidates with matriculation qualification did not apply, candidates with Class-VII pass and above could also apply. The advertisement dated 9.7.2000 also made it clear that the last date for

submitting application form was 24.7.2000. According to Mr. Das, the petitioner put in his application form within due date and supplied necessary certificates. In his application form, the petitioner clearly indicated that his educational qualification was Class-IX pass. In support of that, the petitioner supplied his School Leaving Certificate. According to Mr. Das, only three candidates including the petitioner had put in their application forms for the post of Secretary of Pandua Grama Panchayat. Further according to him none of the candidates was a matriculate. On 25.7.2000, Pandua Grama Panchayat resolved to conduct the necessary tests on 28.7.2000. Accordingly, in the said tests, the petitioner secured highest marks, i.e., 18 out of total 20. This fact has been reflected in Annexure-3. Since the petitioner was found to be more meritorious amongst the available candidates, a Resolution was passed by the Grama Panchayat to appoint the petitioner as Secretary of the Panchayat. In the Resolution under Annexure-3, it was also resolved to write to the District Panchayat Officer-opposite party No. 2 for his approval. Accordingly, vide Annexure-4 dated 30.6.2001 the appointment of the petitioner was approved by the District Panchayat Officer with a consolidated pay of Rs. 2200/- per month until further orders on certain terms and conditions. One of such condition was to produce the original H.S.C. Examination Certificate. Mr. S.S. Das further submitted that though the petitioner had never claimed that he had passed matriculation Examination, however, a strange condition by way of a direction to produce H.S.C. Certificate was put in the approval order. Mr. Das reiterated that a perusal of the advertisement under Annexure-2 made it clear that in case matriculate candidates were not available, the authorities would consider the case of those candidates, who had passed Class-VII. Since the petitioner had passed Class-IX as indicated earlier, he was rightly allowed to participate in the test conducted by the Pandua Grama Panchayat. Further, Mr. Das submitted that proviso to Rule-212(b) also made it clear that if any matriculate candidates were not available, a Grama Panchayat can take into consideration the candidates, who had passed M.E. Examination or any other equivalent Examination. Therefore, the petitioner was legally selected in accordance with law and was correctly appointed against the post of Secretary.

4. While the matter stood thus, some of the villagers claiming to be the Ward Members filed OJC No. 13273 of 2001 before this Court challenging the appointment of the petitioner as Secretary. In the said writ application, it was alleged that the present petitioner (who happened to be opposite party No. 5 in the writ application) had never passed the matriculate Examination and the so-called certificate furnished by the petitioner (opposite party No. 5 to the writ application) is a forged one. The petitioners in OJC No. 13273 of 2001 have been arrayed as opposite party Nos. 6 to 12 in the review petition. The present opposite party Nos. 6 to 12, in the above noted writ application filed by them also pleaded that the procedure needed for recruitment of Secretary had not been followed. They also pleaded that there was no provision for temporary approval for appointment of Grama Panchayat Secretary. Notice was issued in

the writ application and the review petitioner, who happens to be opposite party No. 5 in the writ application, appeared through his lawyer by filing Vakalatnama on 18.6.2002. It appears that neither the District Panchayat Officer nor the Pandua Grama Panchayat, who were arrayed as opposite party Nos. 2 and 4 respectively filed any reply and the review petitioner always remained under the impression that since opposite party Nos. 2 and 4 were the main parties involved in recruiting him, they would defend his recruitment and appointment. He also remained under the impression that the learned counsel engaged by him would defend his interest. From the order dated 5.5.2005 passed in the writ application, i.e., OJC No. 13273 of 2001 it reveals that none has cared to defend his recruitment and appointment and ultimately the matter was disposed of by directing opposite party No. 4 to undertake the process of recruitment of Secretary in accordance with Rules 212 and 213 of the Orissa Grama Panchayats Rules, 1968. It was further directed that opposite party Nos. 2 and 3 to the writ application should implement the aforesaid order dated 5.5.2005 in letters and spirit and no further extension of appointment be granted to the review petitioner (opposite party No. 5 in the writ application) even on ad hoc basis and he should not be permitted to handle cash and to directly deal with any other movables and assets of the Panchayat without the prior approval of opposite party No. 2. Mr. Das further submitted that in due deference to the order dated 5.5.2005 passed in OJC No. 13273 of 2001, the review petitioner was relieved from his post on 16.11.2005 vide Annexure-5 and a Village Level Worker was put in-charge of the post of Secretary of Pandua Grama Panchayat as per Annexure-6. Being aggrieved by the said order, the present review petition was filed by the petitioner.

5. After condoning the delay, notice was issued to the opposite parties on 19.5.2012. Mr. A.P. Bose, learned counsel entered appearance on behalf of opposite party Nos. 6 to 12. On 29.4.2014, this Court directed opposite party No. 2-District Panchayat Officer, Jagatsinghpur to produce the records of recruitment of Secretary of Pandua Grama Panchayat, 2000. Accordingly, the same was produced before this Court.

6. None of the opposite parties have filed any counter-affidavits. Only opposite party No. 2 filed an affidavit pursuant to order dated 24.4.2008 with regard to implementation of order dated 5.5.2005. In the said affidavit, opposite party No. 2 made it clear that the post of Secretary in Pandua Grama Panchayat had not yet been filled up and no advertisement had been published for filling up the said post as because the State Government had taken a policy decision to ban the recruitment of the Grama Panchayat Secretaries.

7. According to Mr. Das though after service of notice, the petitioner had appeared through his counsel in the aforesaid writ application, however, without any fault of the petitioner, he went unrepresented on 5.5.2005. As a result of this, in the order dated 5.5.2005 it was indicated that the petitioner, who was opposite party No. 5 in the writ application had not appeared even after service

of notice. According to Mr. Das, this was clearly an error apparent on the face of record. He further submitted that the petitioner should be allowed to suffer for the fault of his the then Advocate. Secondly, he submitted that the petitioner had never supplied any forged matriculate certificate and accordingly, he pleaded that the Court should go through the records produced by the District Panchayat Officer. Thirdly, he submitted that the records would nowhere show that numerous matriculate candidates applied pursuant to the advertisement and by ignoring such matriculate candidates, the petitioner was selected. Lastly, he submitted that though in the writ application, the petitioners have prayed for quashing Annexures-1, 6 and 7, the Court without quashing the same, had directed opposite party No. 4 to undertake the process of recruitment of Secretary in accordance with law. According to Mr. Das, these are all mistakes/errors, which were apparent on the face of record, which necessitated a review of the order dated 5.5.2005 failing which his client, i.e., the review petitioner would be highly prejudiced.

8. Opposing the submissions made by Mr. Das, Mr. Pradhan, learned Additional Government Advocate vehemently submitted that the review petitioner had not been able to make out a case for review within the parameters of law. Hence, he prayed for dismissal of the review petition. In this context, he placed reliance upon the decisions of the Hon''ble Supreme Court in the cases of Kamlesh Verma Vs. Mayawati and Others, and N. Anantha Reddy Vs. Anshu Kathuria and Others, .

9. Mr. Bose, learned counsel for opposite party Nos. 6 to 12 did not object to the prayer made by the petitioner in the peculiar facts and circumstances of the case.

10. A perusal of record of OJC No. 13273 of 2001 would show that the review petitioner had appeared through his lawyer by filing Vakalatnama on 18.6.2002. Once a person engages a lawyer, he naturally remains under the impression that his case would be best defended by the Advocate. However, in the present case, it appears that while the matter was taken up on 5.5.2005, nobody appeared on behalf of the petitioner (who was opposite party No. 5 in the writ application) as a result of which this Court recorded a finding that opposite party No. 5, who happened to be the review petitioner, has not appeared after service of notice. Thus, the review petitioner has gone unrepresented while the matter was disposed of on 5.5.2005. It is well settled that for the fault of the Advocate, a party should not be penalized. In the case of Mahakali Engineering Corporation and another v. R.C. Subramanyam and others reported in (2000) 10 Supreme Court Cases 264, it has been held that where an order impugned in the review petition was passed in absence of counsel for the review petitioner, the High Court ought to have allowed the review and heard the matter on merits. In N. Anantha Reddy's case (supra) and Kamlesh Verma's case (supra) the facts are totally different. Those cases do not involve lack of due diligence on the part of the Advocate when the matter was being heard. Thus, the facts of both the cases are different from the facts of the present case. Even otherwise in both the above noted cases, the Hon''ble Supreme Court had made clear that the order/

judgment should not be reviewed if there is no error/mistake apparent on the face of the record. Here, the finding of this Court on 5.5.2005 that opposite party No. 5 (review petitioner) after service of notice has not appeared is clearly mistake or error apparent on the face of record inasmuch as by filing Vakalatnama on 18.6.2002, the present petitioner as opposite party No. 5 in the writ application has clearly appeared through an Advocate. Thus, it is a case where for the fault of the lawyer, the petitioner has suffered the order passed on 5.5.2005.

11. In view of the above, this Court sets aside the order dated 5.5.2005 passed by this Court in OJC No. 13273 of 2001 and restores the writ application to its original file.

The Review Petition is accordingly allowed. No costs.